IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 32746 of 2005(W)

AGAINST THE ORDER DATED 16/11/2005 IN EP.186/2004 IN OS.3/1983 of PRL.MUNSIFF, KASARAGOD

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PETITIONER:

1. SUSHEELA, AGED 66 YEARS.

2. LINGAPPAYA, AGED 52 YEARS.

3. DAYANANDA, AGED 60 YEARS.

4. RADHAKRISHNA, AGED 38 YEARS.

5. CHANDRAHASA, AGED 36 YEARS.

6. YOGISHA, AGED 35 YEARS.

7. KAMALAKSHA, AGED 30 YEARS.

8. SURESH, AGED 26 YEARS.
ALL THE PETITIONERS ARE RESIDING AT JALAMANE HOUSE, ARIKADY VILLAGE OF KASARGOD TALUK, P.O.KUMBLA.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENTS:

1. GOPALAKRISHNA, AGED 64 YEARS.

2. RAGHAVAYYA, AGED 64 YEARS,
CHILDREN OF SOORAPPA MASTER, HINDU, AGRICULTURISTS, RESIDING AT GUNDIGADDE HOUSE, ARIKDAY VILLAGE, KASARGOD TALUK.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.32746/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE PHOTO COPY OF JUDGMENT IN S.A.196/90 DT.19.3.98

EXT.P2 – TRUE PHOTO COPY OF EP.186/04

EXT.P3 – TRUE PHOTO COPY OF COMMN. REPORT.

EXT.P3(A) – TRUE PHOTO COPY OF SKETCH.

EXT.P4 – TRUE PHOTO COPY OF COMMISSION REPORT IN O.S.3/83.

EXT.P5 – TRUE PHOTO COPY OF PETITION IN E.A.64/05 DT.11.2.05

EXT.P6 – TRUE PHOTO COPY OF COUNTER IN LA.64/05 IN EP.186/04 BEFORE MUNSIFF'S COURT, KASARAGOD.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.32746 OF 2005

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DATED THIS THE 14TH JUNE, 2007

J U D G M E N T

Heard both sides in detail.

2. I do not propose to go into the merits of the matter. The impugned order passed by the learned Munsiff is a non-speaking order and does not refer to the contentions raised in paragraphs 2 and 3 of Ext.P6 objections. Having regard to the principles laid down by this Court in **Rabiya Umma v. Sulaiman Haji** (1992 (2) KLT 824), it is necessary that the learned Munsiff refers to the contentions and enters a finding that the building in question has been put up by the petitioners in violation of the decree of injunction. Hence, I am inclined to set aside Ext.P2 order and direct the learned Munsiff to pass orders, however, on condition that the petitioners pay a sum of Rs.1500/- to the respondents-decree-holders either directly or through their counsel either in the court below or in this Court, within three weeks from today. Failing such payment, the impugned order will stand confirmed. If payment is made as directed above, the court below will reconsider the issue and pass orders, taking into account the contentions in Ext.P6.

3. Since the proceedings are pending for quite some time, the

learned Munsiff will expedite the matter and pass fresh orders at his earliest and at any rate within two months of receiving copy of this judgment.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

tgl